

Lin v. MetLife

07 civ. 3218

EXHIBIT M

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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JEAN LIN, 07-CV-3218

Plaintiff(s),

-against-

METROPOLITAN LIFE INSURANCE.

Defendant(s).

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150 East 58th Street

New York, NY 10155

December 14, 2007

1:15 P.M.

EXAMINATION BEFORE TRIAL OF DR. DANIEL

ZAMPARRIPA, a witness on behalf of the Defendant

herein, taken by the Attorneys for Plaintiff, held

at 150 East 58th Street, New York, New York, 10155,

on Friday, December 14, 2007, at 1:15 O'clock P.M.

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2 APPEARANCES:
3
4 TRIEF & OLK
5 Attorneys for Plaintiff
6 150 E. 58th Street
7 34th Floor
8 New York, NY 10155
9 BY: Ted Trief
10 BY: Eric Dinnocenzo, Esq.
11
12 TOMASITA SHERER, ESQ.
13 METROPOLITAN LIFE INSURANCE COMPANY
14 Attorneys for Defendant
15 One MetLife Plaza
16 27-01 Queens Plaza North
17 Long Island City, NY 11101
18
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20
21 * * *
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1
2 begun; but the failure to do so, or to return
3 the original of this (these) examination(s)
4 to counsel, shall not be deemed a waiver of
5 the rights provided by Rules 3116 and 3117
6 of the C.P.L.R., and shall be controlled
7 thereby;
8
9 IT IS FURTHER STIPULATED AND
10 AGREED by and between(among) counsel for the
11 respective parties hereto, that this(these)
12 examination(s) may be utilized for all purposes
13 as provided by the C.P.L.R.;
14
15 IT IS FURTHER STIPULATED AND
16 AGREED by and between(among) counsel for the
17 respective parties here, that the filing and
18 certification of the original of this(these)
19 examination(s) shall be and the same hereby are
20 waived;
21
22 IT IS FURTHER STIPULATED AND
23 AGREED by and between(among) counsel for the
24 respective parties hereto, that a copy of the
25

1
2 IT IS HEREBY STIPULATED AND
3 AGREED by and between(among) counsel for the
4 respective parties hereto, that:
5
6 All rights provided by the C.P.L.R.,
7 including the right to object to any question,
8 except as to form, or to move to strike any
9 testimony at this(these) examination(s), are
10 reserved, and, in addition, the failure to
11 object to any question or to move to strike
12 any testimony at this(these) examination(s)
13 shall not be a bar or waiver to make such
14 motion at, and is reserved for the trial of
15 this action;
16
17 IT IS FURTHER STIPULATED AND
18 AGREED by and between(among) counsel for the
19 respective parties hereto, that this(these)
20 examination(s) may be sworn to by the
21 witness(es) being examined, before a Notary
22 Public other than the Notary Public before
23 whom this(these) examination(s) was (were)
24
25

1 Dr. Daniel Zamarippa 5
2 within examination(s) shall be furnished to
3 counsel representing the witness(es)
4 testifying, without charge.
5
6 IT IS FURTHER STIPULATED AND
7 AGREED by and between(among) counsel for the
8 respective parties hereto, that all rights provided
9 by the C.P.L.R., and Part 221 of the
10 Uniform Rules for the Conduct of Depositions,
11 including the right to object to any question,
12 except as to form, or to move to strike any
13 testimony at this examination is reserved;
14 and in addition, the failure to object to any
15 question or to move to strike any testimony
16 at this examination shall not be a bar or
17 waiver to make such motion at, and is
18 reserved to, the trial of this action.
19
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21 * * *
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1 Dr. Daniel Zamarippa 8
2 A. No, it was a health insurance matter.
3 Q. Have you ever testified at trial?
4 A. No, no.
5 Q. Are you a medical doctor?
6 A. Yes.
7 Q. So let me go through your education, okay,
8 Where did you go to college?
9 A. I went in Mexico City. I have my medical
10 degree in Mexico City, in internal medicine in the
11 Spanish Hospital, and cardiology in the Spanish
12 Hospital in Mexico City.
13 Q. Remember, the question. The question was
14 did you go to college, where did you go to
15 college?
16 A. Mexico City.
17 Q. What was the name of the college?
18 A. University -- National University of
19 Mexico.
20 Q. And when did you graduate?
21 A. '85.
22 Q. What was your degree in?
23 A. Medical doctor there. My degree was
24 medical doctor.
25 Q. From college?

1 Dr. Daniel Zamarippa 9
2 MS. SHERER: He doesn't understand
3 "college." University?
4 A. "University" and "college" is the same in
5 Mexico.
6 Q. We're in the U.S., so in the U.S., you go
7 to college first, then you go to medical school
8 afterwards?
9 A. That's different.
10 Q. So explain it.
11 A. That's different, you go six years to
12 medical school after high school.
13 MS. SHERER: After high school.
14 Q. So you spent six years at a medical school
15 which includes college and medical school?
16 A. Yes.
17 Q. And was that the name of the place you
18 just gave us?
19 A. Yes.
20 Q. And you finished in what year?
21 A. '85.
22 Q. And then where did you go for training?
23 A. Internal medicine, in the Spanish
24 Hospital, and that was three years -- well, two
25 years, and then cardiology in the Spanish Hospital

<p>1 Dr. Daniel Zamarippa 10</p> <p>2 in Mexico City.</p> <p>3 Q. And when did you finish cardiology?</p> <p>4 A. '90, or '91 -- '90.</p> <p>5 Q. Then where did you go?</p> <p>6 A. My private practice.</p> <p>7 Q. Your private practice in Mexico?</p> <p>8 A. In Mexico City.</p> <p>9 Q. And how long were you in private practice</p> <p>10 in Mexico City?</p> <p>11 A. Ten years.</p> <p>12 Q. Until 2001?</p> <p>13 A. 2000.</p> <p>14 Q. And was it continually in cardiology?</p> <p>15 A. Yes.</p> <p>16 Q. And cardiology is the study of the</p> <p>17 heart?</p> <p>18 A. Yes.</p> <p>19 Q. And then where did you go?</p> <p>20 A. Well, then I went to -- well, I stopped my</p> <p>21 private practice, because I stopped my private</p> <p>22 practice when I was -- I started my private</p> <p>23 practice, I entered into this insurance medicine in</p> <p>24 Mexico City, and that's the reason I changed my</p> <p>25 private practice to the insurance medicine.</p>	<p>1 Dr. Daniel Zamarippa 12</p> <p>2 practice to insurance medicine.</p> <p>3 Q. How long were you a medical director for</p> <p>4 insurance medicine?</p> <p>5 A. Since '93, '92.</p> <p>6 Q. Health insurance company?</p> <p>7 A. No, life insurance.</p> <p>8 Q. And what is the job of medical director of</p> <p>9 life insurance company?</p> <p>10 A. Basically underwriting, medical</p> <p>11 underwriting.</p> <p>12 Q. What does that mean?</p> <p>13 A. You review the applications and you</p> <p>14 determine if the client applied, is the right -- the</p> <p>15 life insurance, the expected mortality --</p> <p>16 When the client applied for life</p> <p>17 insurance, there's some questions, some medical</p> <p>18 questions, and if he has some kind of disease or</p> <p>19 some kind of disease, some kind of disease, you</p> <p>20 review that disease and see if that medical disease</p> <p>21 has some relevance to the life expectancy.</p> <p>22 Q. I think you used the word "mortality"?</p> <p>23 A. Yes.</p> <p>24 Q. And that's life expectancy?</p> <p>25 A. That's life expectancy.</p>
<p>1 Dr. Daniel Zamarippa 11</p> <p>2 Q. What's insurance medicine? I don't think</p> <p>3 we have something like that in the U.S.</p> <p>4 A. Yes.</p> <p>5 Q. What's insurance medicine?</p> <p>6 A. Insurance medicine is -- well, I'm a</p> <p>7 member of American Academy of Insurance Medicine.</p> <p>8 Q. What is that?</p> <p>9 A. Doctors who work in the insurance</p> <p>10 industry.</p> <p>11 Q. For insurance companies?</p> <p>12 A. Yes.</p> <p>13 Q. You don't get Board Certified in insurance</p> <p>14 medicine, do you?</p> <p>15 A. No, you only have some kind of diploma on</p> <p>16 insurance medicine.</p> <p>17 Q. Well insurance medicine doesn't treat</p> <p>18 patients, do they?</p> <p>19 A. No.</p> <p>20 Q. And why did you leave private practice to</p> <p>21 go into insurance medicine in Mexico?</p> <p>22 A. Because I start -- when I start my private</p> <p>23 practice, I was medical director for insurance</p> <p>24 company, and this was my side job when I was in the</p> <p>25 private practice, and then I changed my private</p>	<p>1 Dr. Daniel Zamarippa 13</p> <p>2 Q. And if his medical condition has no</p> <p>3 bearing on his life expectancy, then it's</p> <p>4 irrelevant, correct?</p> <p>5 A. It depends. It goes according to the</p> <p>6 underwriting guidelines.</p> <p>7 Q. Well the underwriting guidelines are</p> <p>8 looking at mortality expectations, correct?</p> <p>9 A. Yes.</p> <p>10 Q. And if a medical condition has no bearing</p> <p>11 on mortality it should have no bearing on</p> <p>12 underwriting, correct?</p> <p>13 A. Let me put an example. You hit your toe</p> <p>14 you have a fracture of your foot, there's no impact</p> <p>15 on life expectancy or mortality.</p> <p>16 Q. I understand that, but that wasn't the</p> <p>17 question. The question was if the medical condition</p> <p>18 has no impact on mortality, then it should have no</p> <p>19 impact on underwriting?</p> <p>20 MS. SHERER: Objection to the form. You</p> <p>21 can answer.</p> <p>22 A. Depends on your underwriting guidelines.</p> <p>23 Every company has different underwriting</p> <p>24 guidelines.</p> <p>25 Q. The underwriting guidelines are supposed</p>

1	Dr. Daniel Zamarippa	14
2	to be accounting for mortality in a life insurance	
3	setting?	
4	A. Yes.	
5	Q. So the underwriting guidelines are suppose	
6	to look at someone's mortality based upon their	
7	medical condition, correct?	
8	A. Every company has different underwriting	
9	guidelines.	
10	Q. I didn't ask that question, I understand	
11	they do. I understand that every company has	
12	different underwriting guidelines, but whatever	
13	company we're talking about, it's supposed to be	
14	dealing with mortality, correct?	
15	MS. SHERER: Objection to form.	
16	A. Yes.	
17	Q. And if a medical condition has no bearing	
18	on mortality, then it should have no bearing on	
19	underwriting, would you agree?	
20	MS. SHERER: Objection to form.	
21	A. When you review the deceased, you see if	
22	that deceased has an impact on mortality.	
23	MR. TRIEF: Could you read the question	
24	back.	
25	(Whereupon, the referred to question was	

1	Dr. Daniel Zamarippa	16
2	Q. Would you agree that most of your	
3	professional career has been working for life	
4	insurance?	
5	A. Yes.	
6	Q. Are you a hematologist?	
7	A. No.	
8	Q. Are you a liver specialist?	
9	A. No.	
10	Q. Are you a Hepatitis B specialist?	
11	A. No.	
12	Q. What is Hepatitis B?	
13	A. Hepatitis B is a disease, it's a viral	
14	disease. You have an infection from a virus that	
15	affects your liver.	
16	Q. Pardon me?	
17	A. That affects your liver, you have	
18	infection of your liver.	
19	Q. Well does --	
20	A. A viral infection of your liver.	
21	MS. SHERER: Viral?	
22	A. Viral affection.	
23	Q. Does Hepatitis B always affect your	
24	liver?	
25	A. Yes.	

1	Dr. Daniel Zamarippa	15
2	read back by the Court Reporter.)	
3	A. Yes.	
4	Q. When did you start in relationship to	
5	being a practicing physician with your medical --	
6	with your insurance medicine?	
7	A. I didn't understand.	
8	Q. You said you were the medical director for	
9	an insurance company?	
10	A. For an insurance company, yes.	
11	Q. That was what year?	
12	A. '92.	
13	Q. When did you start practicing medicine?	
14	A. Practicing medicine in '91, practicing	
15	medicine you can be a doctor, you can practice	
16	medicine and then during your training in cardiology	
17	and internal medicine, you're practicing medicine.	
18	Q. When did you finish your cardiology	
19	training?	
20	A. March of -- the exact date is, March 1990	
21	Q. And when did you become an insurance	
22	medical director?	
23	A. '92.	
24	Q. What month?	
25	A. May '92.	

1 Dr. Daniel Zamarippa 22
2 read back by the Court Reporter.)
3 MS. SHERER: Objection. You may not like
4 the answer, but you have to ask a different
5 question, and you'll get the answer to the
6 question.
7 MR. TRIEF: I have to get an answer to the
8 question asked.
9 MS. SHERER: Ask the question and he'll
10 answer it.
11 MR. TRIEF: Can you read it back.
12 (Whereupon, the referred to question was
13 read back by the Court Reporter.)
14 A. I don't understand your question.
15 Q. That's a fair response.
16 "Yes, no, I don't know, I don't
17 understand, I get all of those."
18 What kind of doctor treats Hepatitis B?
19 A. Gastroenterologist.
20 Q. Anybody else?
21 A. There's some liver disease doctors.
22 Q. What are they called?
23 A. Hepatologist.
24 Q. Anybody else?
25 A. Internal medicine doctors.

1 Dr. Daniel Zamarippa 23
2 Q. Anyone else?
3 A. Primary care physician can treat a
4 Hepatitis B.
5 Q. What is Interferon (Ph. Spelled.)
6 A. Interferon is a drug to treat -- it's a
7 drug you can have Interferon in your blood, and
8 there's production of alfa, there's a medication
9 right now on the market.
10 Q. Is Interferon ever introduced into a
11 patient to treat Hepatitis B?
12 A. Interferon, the introduction of Interferon
13 was for several -- you can treat several disease
14 with Interferon. I don't know if was specifically
15 for Hepatitis B, but they started with the treatment
16 of Hepatitis with interferon years and years ago, it
17 was only for Hepatitis B when they started.
18 MR. TRIEF: What was the question?
19 MS. SHERER: I didn't think you were
20 finished. Were you finished?
21 Can you read the questions back?
22 Q. Can you answer the question yes or no? If
23 you can't, you can't.
24 (Whereupon, the referred to questions was
25 read back by the Court Reporter.)

1 Dr. Daniel Zamarippa 24
2 Q. Could you answer that question?
3 A. Yes.
4 MR. TRIEF: Just, if you can answer my
5 questions yes or no, answer them that way,
6 because it will speed it along, because I need
7 to have a yes or no if it's in there. If it
8 can be done. So I'll just repeat the question
9 and ask it again, it just takes the deposition
10 longer.
11 MS. SHERER: And I would like to say that
12 I would like you to answer the question, to
13 best of your ability, truthfully and accurately
14 and completely to the best of your ability.
15 MR. TRIEF: Right, but I'm asking if you
16 can answer a question "yes" or "no" start with
17 the words "yes" or "no," and that's my
18 instruction, and you have to follow my
19 instruction, unless there somehow improper or
20 abusive, but I think that the questioners are
21 allowed to ask the witness to answer questions
22 with "yes" or "no" if they can.
23 MS. SHERER: There's no question pending.
24 Q. Are there signs, when a blood test is
25 taken, that demonstrate Hepatitis B?

1 Dr. Daniel Zamarippa 25
2 A. Sorry, can you repeat question?
3 Q. Are there blood tests which can be taken
4 which show signs of Hepatitis B?
5 A. Yes.
6 Q. And are there certain Markers of Hepatitis
7 B in the blood?
8 A. Yes.
9 Q. What are those markers called?
10 A. You can call them "markers" we have the
11 antigens, there's two different. Well there's
12 several Markers. One of the markers is a BS antigen
13 and BE antigen.
14 Q. And what does those markers demonstrate?
15 A. Infection.
16 Q. And do they ever indicate clearing of
17 infection?
18 A. No.
19 Q. Well, are there positive markers and then
20 negative markers?
21 A. Yes, there's positive markers, you can be
22 from, there's two. Can I go beyond this question?
23 MS. SHERER: Yes, you can.
24 MR. TRIEF: Please, that's inappropriate.
25 The instructions come from me. In the middle

1 Dr. Daniel Zamarippa 26
 2 of my deposition, you don't instruct your
 3 witness, they violate the Federal rules, please
 4 don't do that.
 5 MS. SHERER: Is disagree, and I will
 6 defend this deposition, it's my obligation.
 7 MR. TRIEF: I understand that, but
 8 speaking, objections, interruptions, those all
 9 violate our rules, they are.
 10 MS. SHERER: You can answer the
 11 question.
 12 MR. TRIEF: I don't need you to tell him
 13 when --
 14 MS. SHERER: I can make my statements on
 15 the record.
 16 MR. TRIEF: No, you're not suppose to make
 17 any statements.
 18 MS. SHERER: Absolutely I can, I totally
 19 disagree.
 20 MR. TRIEF: If there's a privileged
 21 question, you can be involved in it, if it's
 22 clearly abusive, you can stop me from doing it,
 23 but you can't comment on whether my questions
 24 are good or bad or indifferent or whether he
 25 could answer or couldn't answer it or anything

1 Dr. Daniel Zamarippa 27
 2 like else like that. It's totally
 3 inappropriate.
 4 Can I have the question read back?
 5 MS. SHERER: And I disagree that I did
 6 that on the record.
 7 MR. TRIEF: Can you read the question
 8 back.
 9 (Whereupon, the referred to question was
 10 read back by the Court Reporter.)
 11 Q. Doctor, can you answer the question?
 12 A. Yes.
 13 Q. And what are the positive and negative
 14 markers?
 15 A. You have -- when you don't have infection,
 16 there's -- when you don't have infection, and you
 17 never had the infection, the markers are negative.
 18 If you have the infection, the markers are positive.
 19 There's different markers, you can have that.
 20 Q. If you had had the infection, right, and
 21 then the markers go from positive to negative, does
 22 that mean anything to you?
 23 A. No, because -- no, because there's
 24 again -- again, they're different markers, and you
 25 can have for example, E antigen positive, and then

1 Dr. Daniel Zamarippa 28
 2 negative for a long time. That means you have
 3 active infection, active viral copies in your blood,
 4 but you always have one marker that always will be
 5 positive.
 6 Q. That means you've had it in the past,
 7 correct?
 8 A. You've had the infection.
 9 Q. If you have -- you always have an active
 10 infection once you've had Hepatitis B?
 11 A. No, you can have an inactive period,
 12 process or stage.
 13 Q. And if you become inactive and you remain
 14 inactive for a period of time, are you at any
 15 greater risk of death than the general public?
 16 A. Yes.
 17 Q. Does Hepatitis B occur in greater numbers
 18 in certain communities in this country?
 19 A. I don't have the exact numbers, but in
 20 certain communities in this country, there's more --
 21 there's a tendency to have more infection in the
 22 Asian population.
 23 Q. So the answer is yes to that question?
 24 A. Yes.
 25 Q. Do you know how much greater Hepatitis B

1 Dr. Daniel Zamarippa 29
 2 is in the Asian community, than it is in the
 3 Caucasian community or African American community?
 4 A. I don't have the exact number.
 5 Q. Do you know what an approximate number
 6 is?
 7 A. No, I only have the exact number from the
 8 China -- the Chinese populations.
 9 Q. Was Mr. Lin Chinese?
 10 A. I don't know.
 11 Q. What is the number from the Chinese
 12 population?
 13 A. One in every ten.
 14 Q. And is the Chinese mortality rate lower --
 15 is the Chinese mortality rate lower in this country
 16 than the average person?
 17 A. I don't know.
 18 Q. What's the infection rate in the general
 19 public in the U.S.?
 20 A. I don't know that number.
 21 Q. Approximately?
 22 A. I don't know the number.
 23 Q. Did you speak to anybody in underwriting
 24 about your conclusion that the policy would not
 25 approved as issued with respect to the Mr. Lin?

<p>1 Dr. Daniel Zamarippa 30</p> <p>2 A. No.</p> <p>3 Q. Were you the sole Judge and Jury of</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. Did you ever speak to anybody who</p> <p>7 originally wrote the policy?</p> <p>8 A. No.</p> <p>9 Q. Did you ever speak to the original</p> <p>10 underwriter?</p> <p>11 A. No.</p> <p>12 Q. Who is the original underwriter?</p> <p>13 A. Dennis Westman (Ph. Spelled.)</p> <p>14 Q. How do you spell?</p> <p>15 A. W-E-S-T-M-A-N.</p> <p>16 Q. Is he still with the company?</p> <p>17 A. Yes.</p> <p>18 Q. Where is he located?</p> <p>19 A. Somerset New Jersey.</p> <p>20 Q. Same office as you?</p> <p>21 A. Yes.</p> <p>22 Q. Is he available to testify and are there</p> <p>23 any reasons he can't?</p> <p>24 MS. SHERER: Objection to the form.</p> <p>25 A. I don't know.</p>	<p>1 Dr. Daniel Zamarippa 32</p> <p>2 There is something called the</p> <p>3 "contestability period" or the incontestability</p> <p>4 period, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And that in New York is two years,</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And if a policy is issued and the insured</p> <p>10 dies within the two years, then Met Life can go back</p> <p>11 and do an investigation as to whether there was any</p> <p>12 misrepresentation in the policy, correct?</p> <p>13 A. That's the claim process I. Don't know</p> <p>14 the claim process.</p> <p>15 Q. You don't know the answer to that</p> <p>16 question?</p> <p>17 A. No, I don't know the answer.</p> <p>18 Q. During the -- do you know that this policy</p> <p>19 involves someone who died during the contestability</p> <p>20 period?</p> <p>21 A. Yes.</p> <p>22 Q. Who asked you to issue an opinion in this</p> <p>23 case, who was the person?</p> <p>24 A. Shelby Lyons.</p> <p>25 Q. And who is Shelby Lyons?</p>
<p>1 Dr. Daniel Zamarippa 31</p> <p>2 Q. Do you speak to him regularly?</p> <p>3 A. Yes.</p> <p>4 Q. When was the last time you saw him?</p> <p>5 A. Last week.</p> <p>6 Q. Did he appear in good health to you?</p> <p>7 A. I don't know. He appeared in good health,</p> <p>8 yes.</p> <p>9 Q. That's all I asked you, I didn't ask you</p> <p>10 could you guarantee his good health, just if he</p> <p>11 appeared in good health?</p> <p>12 MS. SHERER: Objection to the form.</p> <p>13 A. Yes.</p> <p>14 Q. And you, at anytime, did you speak to him</p> <p>15 about Mr. Lin?</p> <p>16 A. No.</p> <p>17 Q. Did you think his opinion was relevant?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. Because he underwrite the case and there's</p> <p>21 no positive answers, so there's no yes answers on</p> <p>22 the questions, so he underwrites the case</p> <p>23 correctly.</p> <p>24 Q. Well, when a policy is rejected during --</p> <p>25 withdrawn.</p>	<p>1 Dr. Daniel Zamarippa 33</p> <p>2 A. She's from the Warrick Department (Ph.</p> <p>3 Spelled.)</p> <p>4 Q. What's her title?</p> <p>5 A. I don't know.</p> <p>6 Q. How did she communicate with you?</p> <p>7 A. She sent me the file with this page</p> <p>8 (Indicating.)</p> <p>9 Q. Did you know the policy was during the</p> <p>10 contestability period?</p> <p>11 A. Yes.</p> <p>12 Q. And did you know if you -- if you said</p> <p>13 that there was a material misrepresentation, Met</p> <p>14 Life wouldn't pay on the policy?</p> <p>15 A. Yes.</p> <p>16 Q. And did you know if you said it was not</p> <p>17 material, then they would pay on the policy?</p> <p>18 MS. SHERER: Objection to the form.</p> <p>19 A. Yes.</p> <p>20 Q. And did you know that your opinion</p> <p>21 concerning that, would effect whether Met Life paid</p> <p>22 a million dollars?</p> <p>23 A. To pay, yes, to pay the claim, that Mr.</p> <p>24 Lin has.</p> <p>25 Q. It was a million dollars, correct?</p>

2 A. Yes.

3 Q. So a million dollars was riding on your
4 review as to whether Hepatitis B was a material or
5 not, correct?

6 MS. SHERER: Objection to the form.

7 A. Yes.

8 Q. And you work for Met Life, correct?

9 A. Yes.

10 Q. And you consulted with no one else,
11 correct?

12 A. No one else.

13 Q. Now you indicated before that if there was
14 a misrepresentation -- withdrawn.

15 Are all misrepresentations on the
16 application material in your opinion?

17 A. Yes.

18 Q. So if you have a misrepresentation, it is
19 therefore material, correct?

20 MS. SHERER: Objection to the form.

21 A. Yes.

22 MR. TRIEF: Can I have that blood test.

23 Can I have the underwriting page.

24 Can you mark that.

25 (MARKED FOR ID: Plaintiff's 5.)

2 this document?

3 A. This document states if anything -- well,
4 this document is a document that the underwriter
5 goes to check. If there's no positive answers on
6 the application and he qualifies according to these
7 guidelines, because these are the guidelines to
8 select for a best class policy, he will go to this
9 document, these guidelines, and see if he can
10 qualify for a preferred consideration or elite
11 consideration.

12 Q. Now, if you look at the last line, it says
13 "select preferred will not be available if both of
14 these criteria preclude the class or if any other
15 criterion is not met," do you see that?

16 A. Yes.

17 Q. What does that mean?

18 A. That means you can have -- if you have any
19 impairment or if you have any kind of impairment
20 that doesn't qualify for preferred, for preferred
21 consideration, you can qualify for this, this type
22 of policy, the elite policy.

23 Q. I'm not sure I understand. Let me try it
24 a different way.

25 If you look, it refers to both of these

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2 (Hanging.)

3 These are the first underwriting documents
4 provided and these are marked.

5 Q. Doctor if you would look at Exhibit 5, we
6 marked 4 exhibits with the last witness. So
7 that's why you have Number 5 for today, but if you
8 would look at it, are you familiar with this
9 particular document?

10 A. Yes.

11 Q. And what is it?

12 A. This is the guidelines to qualify for
13 select preferred elite policy.

14 Q. And is that the policy that Mr. Lin got?

15 A. Yes.

16 Q. And is this a record kept in the ordinary
17 course of business of Met Life?

18 A. Sorry?

19 Q. Is this a record kept in the ordinary
20 course of business of Met Life?

21 A. Yes.

22 Q. And is it in the ordinary course of
23 business to keep such a record, correct?

24 A. Yes.

25 Q. And could you explain what is contained in

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2 criteria. I think that means weight and
3 cholesterol, am I correct you can read the whole
4 paragraph and take your time?

5 MS. SHERER: Are you asking him what the
6 "both" means?

7 MR. TRIEF: I don't answer questions.

8 Q. Can you read the paragraph to yourself and
9 see if you can help me there?

10 MS. SHERER: What's the question?

11 MR. TRIEF: Read it back.

12 (Whereupon, the referred to question was
13 read back by the Court Reporter.)

14 MS. SHERER: Do you understand the
15 question?

16 A. You want me to read this.

17 Q. I believe in the last line, the word
18 "both" refers to weight and cholesterol, am I
19 correct?

20 A. Weight and cholesterol, yes.

21 Q. And so if you failed to qualify because of
22 weight or cholesterol it will not be available if
23 both of them exist, and it won't be available if any
24 one of the other items exist, correct?

25 A. Correct.

2 A. Total bilirubin is not a measure of liver
3 enzymes. In this line, the liver enzymes includes
4 this part, liver enzymes include alkaline
5 phosphatase, and AST, ALT and GGTP, and then if you
6 have normal liver enzymes, except for Gilbert
7 syndrome.

8 MR. TRIEF: Move to strike.

9 Q. Is Bilirubin listed as a liver enzymes in
10 that column?

11 Does the lab test show that Mr. Lin's
12 Bilirubin was elevated?

13 A. Yes.

14 Q. And what does that indicate, an elevated
15 bilirubin?

16 A. Excuse me?

17 Q. What does indicate for Mr. Lin's bilirubin
18 to be elevated?

19 A. He can have this elevation, and there's no
20 indication that he has abnormal liver enzymes. I
21 don't understand your question.

22 Q. What does an elevated bilirubin mean?

23 A. Elevated bilirubin means that you can have
24 different scenarios with different bilirubin,
25 different disease could be Gilbert Syndrome.

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2 Q. What is Gilbert Syndrome?

3 A. It's the elevation of total bilirubin,
4 there's no sign of disease, there's no impact in
5 mortality with Gilbert syndrome.

6 Q. What else?

7 A. There's hemolytic anemia.

8 Q. What is that?

9 A. Destruction of the red blood cells.

10 Q. What else?

11 A. And you can have it for bilirubin, you can
12 have also different stage of liver disease.

13 Q. And he showed elevated bilirubin,
14 correct?

15 A. 2.3, yes.

16 Q. And according to Exhibit 5, in your
17 opinion, did he meet the criteria of having no
18 elevated liver enzymes?

19 MS. SHERER: Objection to the form.

20 A. According to this paper.

21 MS. SHERER: Exhibit 5.

22 A. Exhibit 5, you don't qualify for preferred
23 according to the medical history.

24 MR. TRIEF: Could you read the question
25 back.

2 (Whereupon, the referred to question was
3 read back by the Court Reporter.)

4 Q. Can you answer my question?

5 A. Yes, when you have elevated liver enzymes
6 you go the AST, ALT, GGTP, and those are liver
7 enzymes.

8 Q. Was he tested for Hepatitis B?

9 A. No.

10 Q. What is the normal range of Bilirubin?

11 A. 1.5.

12 Q. And what was his?

13 A. 2.3.

14 Q. What's triglycerides?

15 A. Basically, fat in your blood.

16 Q. Is that part of cholesterol?

17 A. It's part of the -- no, it's not part of
18 cholesterol.

19 Q. Well, does it indicate a high
20 cholesterol?

21 A. No.

22 Q. What's the purpose of testing for
23 triglycerides?

24 A. They're several disease that could be
25 related to high triglycerides.

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2 Q. What disease?

3 A. Hepatitis diabetes --

4 Q. Anything else?

5 A. Hyperlipidemia.

6 Q. Does it increase the chance of a heart
7 attack, having elevated triglycerides number?

8 A. No.

9 Q. Does it increase the chance of
10 cardiovascular disease?

11 A. No.

12 Q. Was his triglycerides elevated?

13 A. Very slightly.

14 Q. Yes?

15 A. Yes.

16 Q. Does elevated bilirubin sometimes indicate
17 liver disease such as cirrhosis or Hepatitis?

18 A. Yes.

19 Q. And Met Life before they issued the policy
20 understood that he had elevated bilirubin,
21 correct?

22 MS. SHERER: Objection to the form.

23 A. When he went to 2.3 bilirubin, yes.

24 Q. When the policy was issued, Metropolitan
25 Life insurance company new he had elevated

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 2 bilirubin?
 3 A. 2.3, yes, 2.3.
 4 Q. The answer is "yes"?
 5 MS. SHERER: Objection to the form.
 6 Q. The answer to my question is "yes"?
 7 A. 2.3.
 8 Q. That's elevated, correct?
 9 A. Yes.
 10 Q. And he was not only issued a policy, but
 11 issued a policy for select preferred, correct?
 12 A. Yes.
 13 Q. Are you licensed to practice medicine in
 14 the U.S.?
 15 A. No.
 16 Q. Have you ever sat for a medical exam in
 17 the U.S.?
 18 A. No.
 19 Q. Have you ever had your license suspended
 20 or revoked in Mexico?
 21 A. No.
 22 Q. Or in any other place?
 23 A. No.
 24 Q. Have you ever been convicted of a crime?
 25 A. No.

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 2 Q. Is your salary or bonus ever affected or
 3 do you receive a bonus?
 4 A. Yes.
 5 Q. And is that based on any criteria?
 6 A. Yes, the criteria is basically the
 7 performance of the company.
 8 Q. Is it solely based on the company's
 9 performance or your performance?
 10 A. The whole performance of the company as an
 11 officer.
 12 Q. Is your performance at all relevant to
 13 your bonus?
 14 A. Yes.
 15 Q. Tell me what how your performance is
 16 measured?
 17 A. Basically, according to how many hours you
 18 work, the work load that you have, if you are a
 19 speaker outside of Met Life, and daily work.
 20 Q. Is any record kept of how many claims are
 21 rejected or accepted?
 22 A. I don't know.
 23 Q. You don't know the answer to that
 24 question?
 25 A. I don't know the answer.

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 2 MR. TRIEF: Anytime you want to take a
 3 break. I'm going to try to break at 1:15 for
 4 lunch, would that be okay?
 5 MS. SHERER: Yeah, that sounds good.
 6 MR. TRIEF: So if we're still going, then
 7 we will break.
 8 MS. SHERER: Is that good for you?
 9 THE WITNESS: Yes.
 10 MR. TRIEF: If we finish, we can finish.
 11 I'm not trying to keep you here any longer.
 12 Can you give me this page in here
 13 (Indicating.)
 14 Can you mark that.
 15 (MARKED FOR ID: Plaintiff's 7.)
 16 (Handing.)
 17 Q. Have you ever seen that document before?
 18 A. Yes.
 19 Q. And you recognize it to be a portion of
 20 Mr. Lin's medical records?
 21 A. Yes.
 22 Q. If you go probably three quarters of the
 23 way down, you'll see there's a number "981128." Do
 24 you see that?
 25 A. Yes.

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 2 Q. To the right of that, do you know what
 3 that reads, what it says?
 4 A. Here? (Indicating) "The Hepatitis B
 5 antigen and from negative to positive 98," Yeah.
 6 Q. From negative to positive or positive to
 7 negative?
 8 A. From positive to negative because he was
 9 in treatment.
 10 Q. I think earlier you said from negative to
 11 positive, so you want to correct that?
 12 A. From positive to negative, yes, 98.
 13 Q. And what does that mean to have Hep B go
 14 from positive to negative?
 15 A. You want me to go explain that?
 16 Q. What does it mean for something to go --
 17 for Hep B antigens to go from positive to
 18 negative?
 19 A. That means you have Hepatitis B in the
 20 first instance, and when you, for example, in this
 21 case, that you have Alpha Interferon, you go from
 22 positive antigen, you don't have virus in your blood
 23 stream, and then you go to negative stage, and you
 24 don't have virus, but you have Hepatitis B, you have
 25 the virus.